UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

OCTOBER TERM, 1895.

No. 181.

CHARLES F. JONES,

COMPLAINANT, APPELLANT,

v.

THE MERCHANTS NATIONAL BANK OF BOSTON ET AL.,

DEFENDANTS, APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS, FROM FINAL DECREE (COLT, J.), APRIL 1, 1896.

TRANSCRIPT OF RECORD.

FRANCIS A. BROOKS,
for Appellant.

LEWIS S. DABNEY,
for Appellees.

BOSTON:
PRINTED UNDER DIRECTION OF THE CLERK.
1896.

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1896.

Circuit Court of the United States.

DISTRICT OF MASSACHUSETTS.

IN EQUITY.

No. 492.

CHARLES F. JONES

v.

THE MERCHANTS NATIONAL BANK OF BOSTON.

BILL OF COMPLAINT.

[FILED JUNE 4, 1894.]

To the Honorable the Judges of the Circuit Court of the United States for the District of Massachusetts, sitting in Equity:

Your orator, Charles F. Jones, of the city and county of Philadelphia, in the State of Philadelphia, and a citizen of said State of Pennsylvania, brings this his bill of complaint against the Merchants National Bank of Boston, a corporation duly established under the laws of the United States, and having its place of business at Boston in said District, and a citizen of the State of Massachusetts, and against John G. Stetson and Alexander H. Trowbridge, of said Boston, and citizens of said State of Massachusetts.

1. And your orator complains and says that by the consideration of the Justices of the Circuit Court of the United States, holden at Boston, within and for the District of Massachusetts, on the eighteenth day of July, 1887, he recovered judgment against William C. N. Swift, of New Bedford, in said District, in an action of contract, for the sum of eighteen thousand eight hundred and twenty dollars ($18,820), as damages, and costs of suit taxed at $56.82, or in all for the sum of $18,876.82, as appears of record in said cause, being action No. 2435 on the law docket of this court; that no execution or

other legal process was ever taken out or issued upon said judgment, but that on the day following, to wit, on the nineteenth day of said July, the said defendant and judgment debtor, Swift, paid the amount of said judgment, with the further sum of $3.14 as interest thereon for one day, or in all the sum of $18,879.96, into the hands of the defendant, John G. Stetson, Esq., he then being the clerk of this court; that the said Stetson received said sum at the time in his capacity as clerk or agent of the court; that upon such payment satisfaction was entered of the said judgment upon the docket of the court, and the money received by said Stetson in satisfaction of said judgment was by him turned over to and deposited with the Merchants National Bank of Boston, defendant above named; that the said bank received said sum of said Stetson as the clerk, agent or representative of said Circuit Court, but for the use and benefit of the said Jones, the plaintiff in said action at law No. 2435, or his assigns, and became liable to account therefor to the said Jones or his assigns, or to the clerk for the time being of said court to whose credit it was entered in the books of said bank, and in another book called a pass book, delivered to the said Stetson on the said nineteenth day of July, 1887; that the said Stetson on the sixth day of September, 1892, ceased to be clerk of said Circuit Court, and was succeeded in said office by the defendant Trowbridge, above named, who still continues to be the clerk of said court, and the person authorized to represent the said court in regard to the money deposited in said bank by said Stetson, as aforesaid.

2. And your orator, further complaining, shows that he has applied to the said Trowbridge and requested him to instruct or authorize the said bank to pay over the said money to him, or to draw his check or order as clerk of said court upon said bank in favor of your orator for said money, and that the said Trowbridge has refused or neglected to do so; and your orator is informed and believes that said Trowbridge's reason for such refusal is that on the ninth day of July, 1887, in a certain cause in equity brought by one Charles A. Gregory against Frederic A. Pike and the said William C. N. Swift, being cause numbered 2170 on the Equity Docket of said Circuit Court, an order or decree had been made or entered in the words following, viz:

"Upon the petition of Mary H. Pike, executrix, filed in this cause, and with the consent of Swift and Butterfield, defendants in this cause, and of Thomas H. Talbot, attorney for Charles F. Jones in the suit at law of Jones *v.* Swift, No. 2435 on the law docket of this court, it is ordered, —

(1) That defendant Stetson file the note of $15,000 referred to in the said petition, in the said action at law No. 2435, of Jones *v.* Swift.

(2) That upon the entry of judgment in the said action at law, said Swift be directed to pay into the registry of this court the amount of said judgment (but without commissions, by consent of the parties herein named), and that said amount be held subject to the rights of the parties claiming said note, and to abide the decision of the court in this cause.

(3) That upon the payment by said Swift into the registry of this court of the amount of said judgment, an order of satisfaction of said judgment be entered of record.

By the Court,
ALEX. H. TROWBRIDGE,
Deputy Clerk."

And your orator says he admits that such an order was made and entered by the Court in said equity cause No. 2170, on the ninth day of July, 1887; and that said order did refer to the judgment which was expected would be thereafter rendered in the action at law of your orator against the said Swift, No. 2435, above mentioned; but your orator says he was not a party to said equity cause of Gregory against Pike and Swift, No. 2170, and had no notice whatever of the proceedings in that case upon which said order of July 9, 1887, was based, and no opportunity to be heard thereon or to resist the same, and your orator respectfully suggests that his rights as plaintiff in the action at law No. 2435 cannot be prejudiced or affected in any way by an order passed by a Court of Equity sitting in another cause, without notice or legal process given to or served upon him in any way, and that for other reasons the said order or decree of July 9, 1887, was and is invalid or without legal force and effect as against your orator in any respect.

3. And your orator shows that by reason of the premises the Merchants National Bank, defendant, now holds the money so paid into the hands of the defendant Stetson, July 19, 1887, in his capacity of clerk or agent of this Honorable Court, in trust for the use and

benefit of your orator and his assigns, and should be required to perform or execute the said trust by paying over the same to your orator, less any charges or deductions properly made therefrom by said bank or said clerk or clerks of said court for their services in keeping or preserving the same.

To the end, therefore, that the said defendants may, if they can, show why your orator may not have the relief hereby prayed, and may full, direct and perfect answers make, the said bank answering through its cashier, Alonzo P. Weeks, to such of the several interrogatories hereinafter mentioned and set forth, as by the note hereunder written it is required to answer; that is to say:

1. Whether, on or about July 19, 1887, it did not receive from John G. Stetson, in his capacity of clerk of the Circuit Court of the United States, for the District of Massachusetts, the sum of $18,879.96 for safe keeping?

2. Whether it did not at the same time credit the Circuit Court, or the said Stetson as clerk of said court, with the said sum of $18,879.96, and enter such credit in a pass book delivered to said Stetson at the time?

3. Is not said pass book now in possession of said Stetson, and is there not written on the outside of its cover these words:

"CIRCUIT COURT
JOHN G. STETSON, *Clerk*"

and on the inside, under date of July 19, 1887, these words and figures:

"No. 2435 Jones *v.* Swift $18,879.96"?

If not, how otherwise?

And your orator prays that the said defendant corporation may be directed by decree of this Court to pay over to him or his assigns the sum so deposited with it on the nineteenth day of July, 1887, and still remaining in its hands, or to account to him therefor less any lawful charges or deductions to which the said bank may be entitled for its services in keeping the said fund, or in answering to this bill of complaint; and that on making such payment the defendants may be released and discharged from all liability or accountability for said fund to said Circuit Court, or to John G. Stetson as

clerk of said court, by whom the same was deposited with and intrusted to the said bank, or to his successor in the said office of clerk of said court; and as to the said Stetson and the said Trowbridge your orator asks no relief except that they answer this bill of complaint and make the discovery sought in the interrogatories above proposed.

And your orator prays for such other and further relief as he may be entitled to in the premises.

Wherefore, may it please your Honors to grant unto your orator a writ of subpœna in due form of law directed to the Merchants National Bank of Boston, and the said Stetson and Trowbridge, commanding them to appear at a day certain before this Honorable Court, and then and there full, true, direct and perfect answer make to the premises, and to stand to and abide and perform such decree as your honors may see fit to make therein.

NOTE. The defendants are required to answer the foregoing interogatories, numbered respectively 1, 2 and 3.

And inasmuch as your orator is apprehensive that the defendant corporation might not see fit to answer the interrogatories herein above proposed through some officer possessed of the requisite information, he hereby joins Alonzo P. Weeks, of Salem, and a citizen of Massachusetts, as one of the defendants to said bill of complaint, he being the cashier of the said defendant corporation, in order to require him to answer the said bill of complaint, and the interrogatories therein proposed to the defendants, and prays for the issue of a writ of subpœna to be directed to the said Weeks, commanding him to appear and answer said bill of complaint in the same manner as if the interrogatories therein contained had been proposed to him personally, an answer on oath being however waived by your orator as to all of said defendants.

CHARLES F. JONES,
by F. A. BROOKS.

F. A. BROOKS,
Solicitor for Complainant.

DEMURRER OF THE MERCHANTS NATIONAL BANK.

[Filed July 11, 1894.]

The Demurrer of The Merchants National Bank, *Defendant, to the Bill of Complaint of* Charles F. Jones, *Plaintiff.*

This defendant, by protestation, not confessing all or any of the matters and things in the plaintiff's bill of complaint contained to be true in manner and form as the same are therein alleged and set forth, demurs to said bill, and for cause of demurrer shows, —

1. That the plaintiff has not in and by his said bill made or stated such a case as entitles him in a Court of Equity to any discovery from this defendant or to any relief against this defendant in respect to the matters alleged in said bill or any of said matters.

2. That the relief sought by the bill is a decree requiring this defendant to pay to the plaintiff money alleged in the bill to have been received by John G. Stetson, and deposited with this defendant, in his official capacity of clerk of this court, and entered by this defendant in its books to the credit of this court, and it is enacted by the laws of the United States that no money so received and deposited shall be withdrawn except by order of the judge or judges of said court, respectively, in term or in vacation, to be signed by such judge or judges, and to be entered and certified of record by the clerk.

3. That it appears by the allegations of said bill that the United States of America and the Honorable the Justices of this court are necessary parties to said bill, and yet the same are not, nor is any or either of them, made parties or party thereto.

4. That it appears by the allegations of said bill that Mary H. Pike, executrix, and Thomas H. Talbot, attorney, are necessary parties to said bill, and yet the said Pike and Talbot are not made parties to the same, nor is either of them made a party thereto.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, this defendant demurs thereto, and humbly demands the judgment of the court, whether it shall be compelled

to make any further or other answer to said bill, and prays to be hence dismissed, with its costs and charges in this behalf most wrongfully sustained.

THE MERCHANTS NATIONAL BANK OF BOSTON,
by A. P. WEEKS, *Cashier.*

I, Lewis S. Dabney, do certify that I am counsel for the Merchants National Bank, defendant, and that the foregoing demurrer is, in my opinion, well founded in point of law.

LEWIS S. DABNEY.

COMMONWEALTH OF MASSACHUSETTS,
SUFFOLK, ss.

Then personally appeared before the undersigned, notary public within and for said county, Alonzo P. Weeks, and made oath that he is cashier of the Merchants National Bank, and that the foregoing demurrer is not interposed for delay.

Witness my hand and notarial seal at Boston, in said county, this tenth day of July, A. D. 1894.

[SEAL] G. HOWE DAVIS, *Notary Public.*

DEMURRER OF ALONZO P. WEEKS.

[FILED JULY 11, 1894.]

The Demurrer of ALONZO P. WEEKS, *Defendant, to the Bill of Complaint of* CHARLES F. JONES, *Plaintiff.*

The defendant, by protestation, not confessing all or any of the matters and things in the plaintiff's bill of complaint contained to be true in manner and form as the same are therein alleged and set forth, demurs to said bill, and for cause of demurrer shows:

1. That the plaintiff has not in and by his said bill made or stated such a case as entitles him in a Court of Equity to any discovery from this defendant or to any relief against this defendant in respect to the matters alleged in said bill or any of said matters.

2. That the relief sought by the bill is a decree requiring the Merchants National Bank to pay to the plaintiff money alleged in the bill to have been received by John G. Stetson, and deposited with said The Merchants National Bank, in his official capacity of

clerk of this court, and entered by said bank in its books to the credit of this court, and it is enacted by the laws of the United States that no money so received and deposited shall be withdrawn except by order of the judge or judges of said court, respectively, in term or in vacation, to be signed by such judge or judges, and to be entered and certified of record by the clerk.

3. That it appears by the allegations of said bill that the United States of America and the Honorable the Justices of this court are necessary parties to said bill, and yet the same are not, nor is any or either of them, made parties or party thereto.

4. That it appears by the allegations of said bill that Mary H. Pike, executrix, and Thomas H. Talbot, attorney, are necessary parties to said bill, and yet the said Pike and Talbot are not made parties to the same, nor is either of them made a party thereto.

5. That no interest in the subject matter of the suit is shown by the allegations of the bill in this defendant personally, which entitles the plaintiff to institute it against this defendant, and this defendant is not a proper party defendant to the action.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, this defendant demurs thereto, and humbly demands the judgment of the court, whether he shall be compelled to make any further or other answer to said bill, and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

ALONZO P. WEEKS.

I, Lewis S. Dabney, do certify that I am counsel for Alonzo P. Weeks, defendant, and that the foregoing demurrer is, in my opinion, well founded in point of law.

LEWIS S. DABNEY.

COMMONWEALTH OF MASSACHUSETTS,
SUFFOLK, ss.

Then personally appeared before the undersigned, notary public within and for said county, Alonzo P. Weeks, and made oath that the foregoing demurrer is not interposed for delay.

Witness my hand and notarial seal at Boston, in said county, this tenth day of July, A. D. 1894.

[SEAL] G. HOWE DAVIS, *Notary Public.*

ANSWER OF JOHN G. STETSON.

[FILED AUG. 6, 1894.]

John G. Stetson, one of the defendants in the above cause, answering, says:

(A) This defendant was clerk of the Circuit Court of the United States for the District of Massachusetts from Oct. 1, 1866, to Sept. 6, 1892.

(B) This defendant denies that he was at any time during said period the agent of the said Circuit Court, in any other sense than that he was the clerk thereof and discharged the duties devolving upon him in that capacity.

(C) This defendant admits, so far as his admission may affect him and no further, that he received the sum of $18,879.96, referred to in paragraph numbered 1 in complainant's bill of complaint herein, in his capacity of clerk of said Circuit Court as aforesaid, and deposited the same in the Merchants National Bank of Boston to the credit of said Circuit Court on the nineteenth day of July, but he denies that he deposited said sum to his own credit as clerk or otherwise.

(D) This defendant has no knowledge as to how this deposit was entered on the books of said Merchants National Bank, but he admits, so far as his admission may affect him and no further, that said sum of $18,879.96 was entered on a pass book which, as clerk of said Circuit Court, he held, upon the cover of which was partly written and partly printed, when he received it from said bank, the words, "Circuit Court in account with The Merchants National Bank of Boston", and upon which he wrote with red ink for his own convenience, and that said pass book might be returned to him if it should be mislaid or lost, the words, "John G. Stetson, Clerk, No. 4".

(E) This defendant, so far as his denials and admissions may affect him and no further, denies that he deposited said sum of $18,879.96 in said Merchants National Bank of Boston for the use and benefit of Charles F. Jones or his assigns, and that by reason

thereof the said bank became liable to account therefor to the said Jones or his assigns, or to the clerk for the time being of said Circuit Court, but says that he deposited said sum to the credit of said Circuit Court, and that, after said deposit was made, it, together with the other moneys in said bank to the credit of said Circuit Court, could be withdrawn only by a check or checks, signed by the clerk of said Circuit Court and duly countersigned and allowed by a judge thereof.

(F) Particularly answering the interrogatories numbered 1, 2 and 3 in said bill, so far as his answers may affect him and no further, this defendant says: —

(1) As clerk of said Circuit Court this defendant did deposit in the Merchants National Bank of Boston, to the credit of said Circuit Court, the sum of $18,879.96, on the nineteenth day of July, 1887.

(2) This defendant has no knowledge as to the manner in which credit for said deposit was entered on the books of said bank. Said sum was entered on the pass book hereinbefore referred to.

(3) Said pass book is now in the possession of this defendant, and there are partly written and partly printed on its front cover the words, "Circuit Court in account with The Merchants' National Bank of Boston". There are also written in red ink the words, "John G. Stetson, Clerk, No. 4".

On the inside of said pass book, under date of July 19, 1887, are written the figures, "18879.96". Between the said date and said figures, there appear in the handwriting of this defendant, in red ink, the following: "No. 2435 Jones *v.* Swift". This writing in red ink was made by this defendant for his own convenience.

This defendant has answered fully, as he believes, all matters which he was required to answer by said bill, and prays that he may be hence dismissed with costs, the said bill containing the following: "And as to the said Stetson and the said Trowbridge your orator asks no relief, except that they answer this bill of complaint and make the discovery sought in the interrogatories above proposed" (meaning the interrogatories numbered 1, 2 and 3, above referred to and herein fully answered).

JOHN G. STETSON.

BOSTON, AUG. 6, 1894.

UNITED STATES OF AMERICA,
DISTRICT OF MASSACHUSETTS, ss.

Personally appeared John G. Stetson, who signed the foregoing answer and made oath that the said answer is true to the best of his knowledge, information and belief.

Before me,

[SEAL] FRANCIS S. FISKE,
U. S. Commissioner.

ANSWER OF ALEXANDER H. TROWBRIDGE.

[FILED AUG. 6, 1894.]

Alexander H. Trowbridge, one of the defendants in the above cause, answering, says:

(A) This defendant was appointed clerk of the Circuit Court of the United States for the District of Massachusetts on the sixth day of September, 1892, and on that day duly qualified as such clerk, and has discharged the duties of said office from that day to the present time.

(B) This defendant has declined to take any action with regard to the moneys in the registry of said Circuit Court, except as directed by the said Circuit Court. All orders for the withdrawal of moneys from the registry of the said court are countersigned and allowed by a judge of said court.

(C) Referring to the interrogatories numbered 1, 2 and 3 in said bill, so far as his answering may affect them and no further, this defendant says, as follows: He has no knowledge as to the matters inquired of, further than such knowledge as he has obtained by reading the answers of the defendant Stetson to these interrogatories as said answers are contained in the answer of said defendant Stetson filed this day in said cause, to which this defendant hereby refers.

(D) This defendant has no further knowledge as to the matters set forth in said bill of complaint, and, so far as the same may affect him, requires the complainant to prove the same.

ALEX. H. TROWBRIDGE.

TRANSCRIPT OF RECORD OF CIRCUIT COURT.

[Filed April 21, 1896.]

United States of America,
District of Massachusetts, ss.

At a Circuit Court of the United States for the First Circuit, begun and holden at Boston, within and for the District of Massachusetts, on Wednesday, the fifteenth day of May, in the year of our Lord one thousand eight hundred and ninety-five.

Before

The Honorable LeBaron B. Colt, *Circuit Judge.*

No. 492, Equity.

CHARLES F. JONES, Complainant,

v.

THE MERCHANTS NATIONAL BANK ET AL., Defendants.

The Bill of Complaint in this cause was filed in the clerk's office on the fourth day of June, A. D. 1894, and was duly entered at the May Term of this Court, A. D. 1894, and is in the words and figures following: —

BILL OF COMPLAINT.

[Filed June 4, 1894.]

[Memorandum. The Bill of Complaint, as printed in this Transcript of Record, commencing on page 1, is here inserted. Alex. H. Trowbridge, *Clerk.*]

At the same term the following Demurrers were filed: —

DEMURRER OF THE MERCHANTS NATIONAL BANK.

[Filed July 11, 1894.]

[Memorandam. The Demurrer of the Merchants National Bank, as printed in this Transcript of Record, commencing on page 6, is here inserted. Alex. H. Trowbridge, *Clerk.*]

DEMURRER OF ALONZO P. WEEKS.

[Filed July 11, 1894.]

[Memorandum. The Demurrer of Alonzo P. Weeks, as printed in this Transcript of Record, commencing on page 7, is here inserted. Alex. H. Trowbridge, *Clerk*.]

Also at the same term the following Answers were filed: —

ANSWER OF JOHN G. STETSON.

[Filed Aug. 6, 1894.]

[Memorandum. The Answer of John G. Stetson, as printed in this Transcript of Record, commencing on page 9, is here inserted. Alex. H. Trowbridge, *Clerk*.]

ANSWER OF ALEXANDER H. TROWBRIDGE.

[Filed Aug. 6, 1894.]

[Memorandum. The Answer of Alexander H. Trowbridge, as printed in this Transcript of Record, commencing on page 11, is here inserted. Alex. H. Trowbridge, *Clerk*.]

This cause was thence continued from term to term to the present May Term, A. D. 1895, when the same is set down for hearing and fully heard by the Court on said demurrers, the Honorable LeBaron B. Colt, Circuit Judge, sitting:

On the thirty-first day of March, A. D. 1896, the Opinion of the Court is announced, and on the first day of April, A. D. 1896, the following Final Decree is entered.

FINAL DECREE.

April 1, 1896.

This cause came on to be heard upon the demurrers of The Merchants National Bank of Boston and Alonzo P. Weeks, defendants, and was argued by counsel, and thereupon and upon consideration thereof, this Court doth hold the said demurrers to be good and sufficient, and doth therefore order, adjudge and decree that the

same do stand and be allowed, and as to the said defendants, the said The Merchants National Bank and said Alonzo P. Weeks, the plaintiff's bill is dismissed with costs.

By the Court,

BENJ. H. BRADLEE,

Deputy Clerk.

From this decree the complainant claims an appeal to the United States Circuit Court of Appeals for the First Circuit and gives good and sufficient security to answer all costs and damages if he fail to make his plea good, and said appeal is accordingly allowed.

A true record:

Attest: ALEX. H. TROWBRIDGE,

Clerk.

OPINION OF THE CIRCUIT COURT.

MARCH 31, 1896.

COLT, J. The complainant in this case seeks to charge with a trust in his favor certain funds deposited with the defendant. These funds were deposited with the defendant by order of the Circuit Court, and are now in the Registry of the Court. They were transferred from the original action at law, No. 2,435, of Jones *v.* Swift, to the equity cause No. 2,170, Gregory *v.* Pike *et al.*, under the following order of Court entered July 9, 1887, as appears by the present bill:

"Upon the petition of Mary H. Pike, executrix, filed in this cause" (No. 2,170, Gregory *v.* Pike *et al.*) "and with the consent of Swift and Butterfield, defendants in this cause, and of Thomas H. Talbot, attorney for Charles F. Jones in the suit at law of Jones *v.* Swift, No. 2,435 on the law docket of this court, it is ordered:

(1) That defendant Stetson file the note of $15,000 referred to in the said petition, in the said action at law, No. 2,435, of Jones *v.* Swift.

(2) That upon the entry of judgment in the said action at law, said Swift be directed to pay into the registry of this court the amount of said judgment (but without commissions, by consent of the parties herein named), and that said amount be held subject to the rights of the parties claiming said note, and to abide the decision of the Court in this cause.

(3) That upon the payment by said Swift into the registry of this court of the amount of said judgment, an order of satisfaction of said judgment be entered of record.

By the Court,

ALEX. H. TROWBRIDGE,

Deputy Clerk."

This bill does not state a case which entitles the complainant to any relief in a court of equity. The bill is also defective for want of necessary parties. I shall, therefore, sustain the first and fourth grounds of the demurrer, and direct that the bill be dismissed.

PRAYER FOR APPEAL AND ASSIGNMENT OF ERRORS.

[FILED APRIL 6, 1896.]

PRAYER FOR APPEAL.

And now comes Charles F. Jones, plaintiff in the above entitled cause, and conceiving himself aggrieved by the decree entered in said cause on the first day of April, 1896, does hereby appeal from said decree to the United States Circuit Court of Appeals for the First Circuit, and prays that this his appeal may be allowed.

By his Solicitor,

F. A. BROOKS.

ASSIGNMENT OF ERRORS.

And now comes Charles F. Jones, the plaintiff above named, and says that in the record and proceedings in the above entitled cause and in the decree entered therein there is manifest error; and he makes the following assignment of errors or reasons why said decree is erroneous and should be reversed.

Firstly. Because it does not appear from said bill of complaint or the pleadings and evidence of record in said cause that the money on deposit with the defendant corporation and claimed by the plaintiff is or ever was in the registry of this Honorable Court for ad-

ministration or distribution by it between the parties to another cause in equity, entitled Charles A. Gregory *v.* Frederic A. Pike *et al.*, and this Court has erred in holding or ruling, as it has done, that such was the fact and in assigning such supposed fact as one of the reasons for dismissing the plaintiff's said bill of complaint.

Secondly. Because the old equity cause of Gregory *v.* Pike and Swift, mentioned and referred to in the opinion of the Court in this case filed March 31, 1896, was not pending in this court and has not been so pending therein at any time since Jan. 10, 1887.

Thirdly. Because from the allegations of fact in the plaintiff's bill of complaint contained, admitted by the demurrer of the defendant to be true, it appears that the money claimed by the plaintiff was paid over to the clerk of this court by Swift, the defendant in the action at law of Jones *v.* him, after the rendition of judgment in said action, on which judgment no execution or other legal process was ever issued, and that said money was by said clerk deposited with the defendant corporation for safe keeping and was held by said bank for the use and benefit of the plaintiff in said action at law, and that the Court erred in sustaining the defendants' first ground of demurrer.

Fourthly. Because it does not appear from the bill of complaint that Mary H. Pike or Thomas H. Talbot, or either of them, had or have any claim to or interest in the money here claimed by the plaintiff and the Court erred in ruling and holding the contrary thereof, and in sustaining the fourth ground of demurrer assigned by defendant.

By his Solicitor,

F. A. BROOKS.

BOND TO PARTY ON APPEAL.

[Filed and Approved April 6, 1896.]

Know all Men by these Presents, That we, Charles F. Jones, of the city and county of Philadelphia and State of Pennsylvania, as principal, and John Brooks, of the city of Cambridge, and Francis A. Brooks, of the city of Boston, both of Massachusetts, as sureties, are held and firmly bound unto The Merchants National Bank of Boston, a corporation duly established by law at said Boston, and Alonzo P. Weeks in the full and just sum of five thousand dollars

to be paid to the said banking corporation, its successors, and to said Weeks, his heirs, executors, administrators or assigns, certain attorney, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this fourth day of April in the year of our Lord one thousand eight hundred and ninety-six.

Whereas, lately at a Circuit Court of the United States for the District of Massachusetts in a suit in equity depending in said court, between the said Charles F. Jones as plaintiff and the said banking corporation as defendant and said Weeks also as defendant, a decree was entered against the said Jones, and the said Jones having obtained an appeal to remove said cause to the United States Circuit Court of Appeals for the First Circuit, to reverse the decree in the aforesaid suit, and a citation directed to the said The Merchants National Bank citing and admonishing it to be and appear in the said United States Circuit Court of Appeals for the First Circuit, in the city of Boston, Massachusetts, on the sixth day of May, A. D. 1896.

Now, the condition of the above obligation is such, that, if the said Charles F. Jones shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his appeal good, then the above obligation to be void; else to remain in full force and virtue.

CHARLES F. JONES [SEAL]
by F. A. BROOKS, *his attorney in fact.*
JOHN BROOKS [SEAL]
FRANCIS A. BROOKS [SEAL]

Approved: LEBARON B. COLT, *Circuit Judge.*

This bond is satisfactory to The Merchants National Bank of Boston.

L. S. DABNEY, *Solicitor.*

CITATION ON APPEAL.

UNITED STATES OF AMERICA, ss.

THE PRESIDENT OF THE UNITED STATES,

To the Merchants' National Bank of Boston, a corporation duly established by law, and Alonzo P. Weeks, both of Boston, in the District of Massachusetts,

GREETING:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the First Circuit, in the city of Boston, Mass., on the sixth day of May next, pursuant to an appeal duly obtained from a decree of the Circuit Court of the

United States for the District of Massachusetts, wherein Charles F. Jones, of the city and county of Philadelphia and State of Pennsylvania, is appellant and you are appellees, to show cause, if any there be, why the said decree, entered against the said appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable LeBaron B. Colt, Judge of the Circuit Court of the United States for the District of Massachusetts, this seventh day of April, in the year of our Lord one thousand eight hundred and ninety-six.

LEBARON B. COLT, *Circuit Judge.*

BOSTON, APRIL 13, 1896.

Due service of this citation is hereby accepted for The Merchants National Bank and for Alonzo P. Weeks.

By L. S. DABNEY,
their Solicitor.

CLERK'S CERTIFICATE.

UNITED STATES OF AMERICA,
DISTRICT OF MASSACHUSETTS, ss.

I, Benjamin H. Bradlee, Deputy Clerk of the Circuit Court of the United States for the District of Massachusetts within the First Circuit, certify that the foregoing is a true copy of the record and all proceedings in the cause in equity entitled,

No. 492.

CHARLES F. JONES, COMPLAINANT,

v.

THE MERCHANT'S NATIONAL BANK ET AL., DEFENDANTS,

in said Circuit Court determined, the opinion of the Circuit Court of March 31, 1896, the prayer for appeal and assignment of errors, and the bond to party on appeal, and also the original citation issued upon the appeal of the complainant in said cause, with the acknowledgment of service thereon.

In testimony whereof, I hereunto set my hand and affix the seal of said Circuit Court, at Boston, in said District, this twentieth day of April, A. D. 1896.

[SEAL] BENJ. H. BRADLEE,
Deputy Clerk.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

OCTOBER TERM, 1896.

No. 181.

CHARLES F. JONES,
COMPLAINANT, APPELLANT,

v.

THE MERCHANTS NATIONAL BANK OF BOSTON ET AL.,
DEFENDANTS, APPELLEES.

DECREE.

OCTOBER 23, 1896.

This cause came on to be heard Oct. 13th, 1896, upon the transcript of the record of the Circuit Court of the United States for the District of Massachusetts, and was argued by counsel.

On consideration whereof, it is now, to wit, Oct. 23d, 1896, ordered, adjudged and decreed as follows:

The decree of the Circuit Court is affirmed, and the defendant corporation will recover its costs in this Court against the appellant.

By the Court,
JOHN G. STETSON, *Clerk.*

A true copy:
Attest: JOHN G. STETSON, *Clerk.*

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

OCTOBER TERM, 1896.

No. 181.

CHARLES F. JONES,

COMPLAINANT, APPELLANT,

v.

THE MERCHANTS NATIONAL BANK OF BOSTON ET AL.,

DEFENDANTS, APPELLEES.

No. 184.

CHARLES A. GREGORY,

COMPLAINANT, APPELLANT,

v.

THE MERCHANTS NATIONAL BANK OF BOSTON ET AL.,

DEFENDANTS, APPELLEES.

No. 185.

CHARLES A. GREGORY,

COMPLAINANT, APPELLANT,

v.

BOSTON SAFE DEPOSIT AND TRUST COMPANY,

DEFENDANT, APPELLEE.

APPEALS FROM THE CIRCUIT COURT FOR THE DISTRICT OF MASSACHUSETTS.

BEFORE PUTNAM, WEBB AND ALDRICH, JJ.

OPINION OF THE COURT.

OCTOBER 23, 1896.

PUTNAM, J. These three appeals can be considered together. The Merchants National Bank of Boston is a place of deposit of moneys paid into the Circuit Court of the United States for

the District of Massachusetts, under a standing order, entered May 21, 1868, of which the following is a copy:

"Ordered that The Merchants National Bank, of Boston, be and the same is, hereby, designated as the place of deposit of all moneys paid into the registry of the Circuit Court of the United States for this district; and that all the moneys paid into the registry of said court be deposited by the clerk in said bank, to the credit of the said Circuit Court; and that no moneys so deposited be drawn or paid out except by the court and on the checks of the clerk of the said court, approved by one of the justices of the said court; and that the clerk furnish said bank with a certified copy of this order."

Being a general order, the Circuit Court was bound to take judicial notice of it, and we must therefore treat these appeals as though it had been put into the record. At the argument some criticism was made of the expression it contains, "moneys paid into the registry of the Circuit Court," on the ground that it had peculiar, and indeed sole, reference to moneys paid in on the equity side. Section 995 of the Revised Statutes reads as follows:

"All moneys paid into any court of the United States, or received by the officers thereof, in any cause pending or adjudicated in such court, shall be forthwith deposited with the Treasurer, an assistant treasurer, or a designated depositary of the United States, in the name and to the credit of such court: *Provided*, That nothing herein shall be construed to prevent the delivery of any such money upon security, according to agreement of parties, under the direction of the court."

This was enacted after the order was entered, but the order has been continuously recognized and acted on by the court as answering its full requirements, no other standing depositary having been designated. In view of this fact, there can be no doubt that the deposit made in that bank, and in controversy in two of these appeals, must be regarded as made under the direction of the Circuit Court, pursuant to the requirements of the statute, and that it must be treated as

the fund of the court, as fully as though it were in the personal possession of its clerk, and, therefore, subject in all respects to its summary control and disposition, and entitled to protection in all particulars, in order that it may be free at all times for such disposition. Any interference with it, or with the bank where it is deposited, or attempt thereto, which would embarrass in any degree such control or disposition, or harass the bank, or put it to expense, by reason of its possessing the fund, unless the consent of the Circuit Court was first obtained, would amount, on plain principles of law, to an implied contempt, and, if persisted in understandingly, to an actual one.

The fund in The Merchants National Bank was originally paid into the common law side of the Circuit Court, in satisfaction of a judgment recovered by the appellant Jones against one Swift on a note of $15,000; but, by an order of the court on the equity side, it was held to abide the result of an equity suit in which the appellant Gregory was the complainant. An order was entered in the latter suit as follows:

"Upon the petition of Mary H. Pike, executrix, filed in this cause, and with the consent of Swift and Butterfield, defendants in this cause, and of Thomas H. Talbot, attorney for Charles F. Jones in the suit at law of Jones *v.* Swift, No. 2435 on the law docket of this court, it is ordered,—

(1) That defendant Stetson file the note of $15,000 referred to in the said petition, in the said action at law No. 2435, of Jones *v.* Swift.

(2) That upon the entry of judgment in the said action at law, said Swift be directed to pay into the registry of this court the amount of said judgment (but without commissions, by consent of the parties herein named), and that said amount be held subject to the rights of the parties claiming said note, and to abide the decision of the court in this cause.

(3) That upon the payment by said Swift into the registry of this court of the amount of said judgment, an order of satisfaction of said judgment be entered of record."

It is claimed that Talbot, thus named, was not Jones's attorney for the purpose of the order, if at all, and that the order itself was irregular and ineffectual. But it is wholly immaterial in these appeals whether the fund went into The Merchants National Bank from the law side of the court or from the equity side. It got there from the United States Circuit Court for the District of Massachusetts as money which had been paid into court, and under the sanction of the statute we have cited, and of the order of court already set out; and it was held by the Bank as the agent and representative of the court for that purpose. Nothing more was required.

The Boston Safe Deposit and Trust Company was never a standing depositary of the Circuit Court, but a fund was deposited there in pursuance of the spirit of the exceptive language found in the last clause of section 995 of the Revised Statutes, already set out. The same appellant Jones recovered another judgment against the same Swift, in the same Circuit Court, for $24,926.90, which Swift also paid into court. In the bill against this corporation, as also in his bill against The Merchants National Bank, Gregory alleges that Jones was only a nominal party representing Gregory's interest. This fund was paid in pursuant to an order of the court in the suit at law, as follows:

"Execution to be stayed ten days to give opportunity to defendant to pay amount of judgment into court. If paid in, money to remain in court subject to order of court."

The circumstances under which the fund in the Boston Safe Deposit and Trust Company, which fund is a part of that paid into court in the second suit against Swift, reached that corporation, appear by the following evidence of appellant Gregory, found in the record of the suit at bar brought by him against it:

"*Int.* It appears from the copy of record in action at law, No. 2632, put in evidence by you in this case, that said Swift

on the sixth day of January, 1887, paid into court, or into the hands of the clerk of the United States Circuit Court, the sum of $24,926.90 in payment of satisfaction of the judgment previously recovered against him in the said action at law of Charles F. Jones. Please state, if you can, what became of that money or of $24,000 thereof, and where the said $24,000 now is.

Ans. Of such money so paid into court by Swift, $24,000 is now in possession of the defendant in this suit, the Boston Safe Deposit and Trust Company.

Int. What agency, if any, had you in placing this money in the hands of the defendant corporation, and for what reason did you seek to do this?

Ans. My attorney and counsel, F. A. Brooks, applied to the officers of the defendant corporation to get them to consent to take this money on deposit and to pay interest on it while on deposit, and he obtained their consent to do so. He then applied to the court to have it passed over to or deposited with said Trust Company, and it was done by order or permission of the court. It was done by my procurement and for the purpose of obtaining interest on the money during the pendency of the controversy in regard to the ownership of the note upon or under which the judgment against Swift had been recovered."

Of course the proper proof of an order of a court is a copy of the order itself; but no objection has been made on this score, and there is no doubt about the facts stated by Gregory. Therefore, the fund in the Boston Safe Deposit and Trust Company consists of moneys which had been paid into court, and were deposited under its special order to await litigation then pending. This deposit was permissible notwithstanding the statute, but it was not required by it, so it has only the sanction of the common law. But there arises from this no distinction, so far as these appeals are concerned, between this deposit and that in the bank; as aside from certain regulations of statute as to the method of checking and vouching, the latter owes its protection, and the method of its disposition, to the same rules of the general law as the former. Independently of all statu-

tory provisions, the plain and well-known principles of the general law, especially as administered in equity, furnish sufficient sanction and protection to each, and each is in all respects declared by the law to be as exempt from the process of the litigant, without the consent of the court first obtained, as though it had always remained in the personal custody of the court's immediate officials.

Although, in response to the propositions of the appellants, we have thus gone into the details showing that these two funds came into the custody of the respective depositaries pursuant to orders of the court, yet we are not to be understood as now impeaching the broad proposition, that the essential position would be in all respects the same if it appeared only that the funds had been transferred from the court to the depositaries by the act of the clerk, under color of authority from the court, so long as the act of the clerk remained without any disavowal by the court.

The funds having been thus accumulated in the respective depositaries, the appellants, conceiving that they had an interest therein which had not been adjudicated to them, but without obtaining the leave of the court to proceed against them or the depositaries, and without any petition to the court asking leave to intervene in the usual way, filed these three bills, one against one of the depositaries, the present clerk of the Circuit Court and his predecessor in office, one against the same depositary and a person in whose favor the Circuit Court had decreed an interest in the funds, and the third against the other depositary and also the same person named in the second. Each bill claims title to the respective funds, and prays direct relief against the respective depositaries in the particulars that they may respectively be decreed to pay the respective funds to the complainants; and the complainants took out subpœnas under the Rule, and served them, as in the case of any litigious bill filed as of right.

Our attention has been called to the want of parties; but we prefer to put our decision on such grounds as will protect the depositaries of the Federal courts in this circuit from all such attempts to harass them. We doubt not these bills were filed entirely in consequence of a zealous desire to seek a remedy for a supposed right, and with no purpose beyond that. Yet the occasion requires us, not to state at large why proceedings of this character are not tolerated by the law, but only to declare the rule, so that no one can hereafter excuse himself for not regarding it. The futility of all such bills is sufficient to defeat them, because, notwithstanding the pendency of one of them, the court having control of a fund may order the entire disposition of it summarily, thus leaving nothing for the bill to act on. A bill which can reach no result except by staying the ordinary and rightful exercise of the essential functions of the court, is, by its character, so futile that it ought to be dismissed for that reason alone; but it is enough to say that the rule that bills of this sort will not be tolerated is so fundamental, and so necessary to the full exercise of judicial functions, that the reasons on which it rests need not be further stated.

We have now covered all which is necessary to the decision of these appeals; but in view of the earnest arguments of the complainants' counsel, based on a supposed ground of recovery which was not presented to us on an appeal in the original cause, of which the pending appeals seem in some way to be outgrowths, it may not be out of place for us to observe that, if we were to permit the present bills to stand so far as concerns the objections we have considered, and were to assume that in other respects they were sufficient to put in issue the propositions which have been argued to us, we do not perceive that they could be effectual to give the complainants the relief they desire. In the principal cause referred to the court had jurisdiction of the parties and the subject

matter of the controversy; and the judgment therein must, therefore, be taken as conclusive in the absence of proceedings in the manner pointed out in the authorities cited in our opinion passed down this day in *Gregory* v. *Pike*. If a suitor, by misfortune or mistake, selects what proves to be the weaker grounds on which to stand, rather than the stronger, he may, nevertheless, be concluded by the result, which may thus add itself to the many instances in which counsel, after an adverse decision, disturb themselves, often unnecessarily, with the reflection that, if the cause had been tried on different lines, defeat would not have followed.

In each case there will be entered the following order:

The decree of the Circuit Court is affirmed, and the defendant corporation will recover its costs in this court against the appellant.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

OCTOBER TERM. 1896.

No. 181.

CHARLES F. JONES,
COMPLAINANT, APPELLANT,
v.
THE MERCHANTS NATIONAL BANK OF BOSTON ET AL.,
DEFENDANTS, APPELLEES.

PLAINTIFF'S CLAIM OF APPEAL.

[PRESENTED IN COURT AND FILED OCT. 23, 1896.]

The above-named plaintiff, Charles F. Jones, conceiving himself aggrieved by the order entered Oct. 23d, 1896, in the above-entitled cause, numbered 181 on the calendar of this court, doth hereby appeal from said order to the Supreme Court of the United States, for the reasons specified in the assignment of errors, which is filed herewith; and he prays that this, his appeal, may be allowed, and that a transcript of the record and proceedings and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

By F. A. BROOKS,
Attorney for the Plaintiff above named.

A true copy:
Attest: JOHN G. STETSON, *Clerk.*

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

OCTOBER TERM, 1896.

No. 181.

CHARLES F. JONES,
COMPLAINANT, APPELLANT,
v.
THE MERCHANTS NATIONAL BANK OF BOSTON ET AL.,
DEFENDANTS, APPELLEES.

ASSIGNMENT OF ERRORS.

[PRESENTED IN COURT AND FILED OCT. 23, 1896.]

And now comes Charles F. Jones, the above-named plaintiff, and says that in the record and proceedings in the above-entitled cause and in the decree entered therein, there is manifest error; and he makes the following assignment of errors or reasons why said decree is erroneous and should be reversed.

Firstly. Because it does not appear from said bill of complaint or the pleadings and evidence of record in said cause, that the money on deposit with the defendant corporation and claimed by the plaintiff is or ever was in the registry of this Honorable Court for administration or distribution by it between the parties to another cause in equity, entitled Charles A. Gregory *v.* Frederic A. Pike *et al.*, and this Court has erred in holding or ruling, as it has done, that such was the fact, and in assigning such supposed fact as one of the reasons for dismissing the plaintiff's said bill of complaint or affirming the decree of the Court below.

Secondly. Because the old equity cause of Gregory *v.* Pike and Swift, mentioned and referred to in the opinion of the Court below,

in this case filed March 31st, 1896, was not pending in this court, and has not been so pending therein at any time since Jan. 10th, 1887.

Thirdly. Because from the allegations of fact in the plaintiff's bill of complaint contained, admitted by the demurrer of the defendant to be true, it appears that the money claimed by the plaintiff was paid over to the clerk of this court by Swift, the defendant in the action at law of Jones *v.* him, after the rendition of judgment in said action, on which judgment no execution or other legal process was ever issued, and that said money was by said clerk deposited with the defendant corporation for safe keeping and was held by said bank for the use and benefit of the plaintiff in said action at law, and that the Court below erred in sustaining the defendant's first ground of demurrer, and this Court has erred in affirming the decree of the Court below.

Fourthly. Because it does not appear from the bill of complaint that Mary H. Pike or Thomas H. Talbot, or either of them, had or have any claim to or interest in the money here claimed by the plaintiff, and the Court erred in ruling and holding the contrary thereof, and in sustaining the fourth ground of demurrer assigned by defendant, and because this Court has affirmed these rulings of the Court below.

By his solicitor,

F. A. BROOKS.

A true copy:

Attest: JOHN G. STETSON, *Clerk.*

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

OCTOBER TERM, 1896.

No. 181.

CHARLES F. JONES,
COMPLAINANT, APPELLANT,
v.
THE MERCHANTS NATIONAL BANK OF BOSTON ET AL.,
DEFENDANTS, APPELLEES.

BOND TO PARTY ON APPEAL.

[PRESENTED IN COURT AND FILED OCT. 23, 1896.]

Know all men by these presents, That we, Charles F. Jones of the city of Philadelphia, as principal, and John Brooks of the city of Cambridge, Mass., and Francis A. Brooks of the city of Boston, Mass., as sureties, are held and firmly bound unto the Merchants National Bank of Boston, in the full and just sum of ten thousand dollars, to be paid to the said Merchants National Bank, its certain attorney, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals and dated this twenty-third day of October, in the year of our Lord one thousand eight hundred and ninety-six.

Whereas, lately at a Circuit Court of Appeals of the United States for the First Circuit in a suit in equity depending in said court, between the said Charles F. Jones as plaintiff and the said Merchants National Bank as defendant, a decree was entered against the said Jones, and the said Jones, having obtained an appeal to remove said cause to the Supreme Court of the United States, to reverse the decree in the aforesaid suit, and a citation directed to the said Merchants National Bank of Boston, citing and admonishing it to be and appear in the said Supreme Court of the United States on the twenty-first day of November, A. D. 1896;

Now the condition of the above obligation is such, that, if the said Charles F. Jones shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his appeal good, then the above obligation to be void; else to remain in full force and virtue.

CHARLES F. JONES, [SEAL]
by F. A. BROOKS,
his Attorney in fact.
JOHN BROOKS. [SEAL]
FRANCIS A. BROOKS. [SEAL]

Sealed and delivered in presence of
RICHARD T. BUTLER.

A true copy:
Attest: JOHN G. STETSON, *Clerk.*

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

OCTOBER TERM, 1896.

No. 181.

CHARLES F. JONES,
COMPLAINANT, APPELLANT,
v.
THE MERCHANTS NATIONAL BANK OF BOSTON ET AL.,
DEFENDANTS, APPELLEES.

ORDER OF COURT.

[Oct. 23, 1896.]

Ordered: The appeal asked for in this case is denied for the reason that under the Statutes it is not appealable, and a mandate will issue forthwith.

By the Court,

JOHN G. STETSON, *Clerk.*

A true copy:

Attest: John G. Stetson, *Clerk.*

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

CLERK'S CERTIFICATE.

I, John G. Stetson, Clerk of the United States Circuit Court of Appeals for the First Circuit, certify that the pages numbered 1 to 17, inclusive, hereto prefixed, contain and are a true copy of a transcript of record of the Circuit Court of the United States for the District of Massachusetts, the same being the entire record upon which the cause numbered and entitled,

No. 181.

CHARLES F. JONES,
COMPLAINANT, APPELLANT,
v.
THE MERCHANTS NATIONAL BANK OF BOSTON ET AL.,
DEFENDANTS, APPELLEES,

was heard and determined in said Circuit Court of Appeals.

I further certify that pages, numbered 18 to 32, inclusive, hereto prefixed, contain and are true and attested copies of papers filed, and of decree and order entered in the United States Circuit Court of Appeals for the First Circuit, subsequently to the filing of the transcript of record of said Circuit Court, April 21, 1896, namely:

(1) Decree, Oct. 23, 1896, page 18.

(2) Opinion of the Court, Oct. 23, 1896, pages 19 to 26, inclusive.

(3) Plaintiff's Claim of Appeal, page 27.

(4) Assignment of Errors, pages 28 and 29.

(5) Bond to Party on Appeal, pages 30 and 31.

(6) Order of Court, Oct. 23, 1896, denying appeal, page 32.

I further certify that said transcript of record of the Circuit Court of the United States for the District of Massachusetts, and said papers, decree and order, remain on file and of record in said United